

**REMARKS/ARGUMENTS**

The Office Action mailed October 4, 2007 has been carefully considered.

Reconsideration in view of the following remarks is respectfully requested.

The present claims are directed to compounds/beverages containing a specific catechin represented by chemical formula (1) (claims 1-7) in an amount of 1 mg to 30 mg per 100 ml (Claims 1-2, 4-5).

A beverage is a drink that one takes when feeling thirsty and wishes to ingest fluid.

By containing a specific catechin in an amount of 1 mg to 30 mg per 100 ml of beverage (claims 1-2, 4-5), a drinker can readily ingest the beverage without experiencing negative organoleptic characteristics such as bitter and stringent tastes, and simultaneously suppress two entirely different disorders, namely, allergic symptoms and hyperlipemia.

Therefore, it becomes possible for a drinker to routinely ingest a drug in the form of a beverage, and at the same time not be aware of taking the drug.

As a result, ingestion of a composition comprising a suitable amount of catechin according to the present invention enables simultaneous suppression of allergic symptoms and hyperlipemia.

Hyperlipemia refers to a disorder in which the serum neutral fat or cholesterol exceeds the average level, with arteriosclerosis, obesity, and hepatic disorder corresponding to the complications thereof.

**The 35 U.S.C. § 112, Second Paragraph Rejection**

Claim 4 stands rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter applicant regards as the invention. This objection is respectfully traversed. The objected-to quotation

marks have been removed from the claim. Accordingly it is respectfully requested that this rejection be withdrawn.

### **The First 35 U.S.C. § 102 Rejection**

Claims 1-2 and 5-7 stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by JP 2000-159670 abstract. This rejection is respectfully traversed.

According to the M.P.E.P., a claim is anticipated under 35 U.S.C. § 102(a), (b) and (e) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.<sup>1</sup>

### **Regarding claims 1, 2 and 5**

Claim 1 has been amended to include the limitations of original dependent claim 3 and, accordingly, we believe that the rejection of claims 1, 2 and 5 based on JP 2000-159670 should now be withdrawn.

JP 2000-0159670 discloses 3-O-methylgalloylepigallocatechin and 4-O-methylgalloylepigallocatechin derived from tea leaves such as those of Seishin-taipan, Benihomare, Benifuji, and Benifuuki (see paragraphs [0008] to [0011]), and states that these catechins are effective in preventing, suppressing and/or ameliorating allergic symptoms or inflammation (see paragraph [0007]) and can be used in carbonated, fruit, or lactic beverages, etc. (see paragraph [0014]).

JP 2000-0159670 discloses that a phenolic fraction containing the above-described catechins is used in an amount ranging from 5 to 300 mg/kg per day when used as food and drink

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<sup>1</sup> Manual of Patent Examining Procedure (MPEP) § 2131. See also *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

(see paragraph [0018]), however, the amount of catechins included is not disclosed.

Furthermore, it is not clear to what the denominator, kg, of 5 to 300 mg/kg refers.

In addition, JP 2000-0159670 does not disclose the relationship between the suppression of hyperlipemia and catechin or the amount thereof ingested.

#### Regarding claims 6 and 7

Although JP 2000-0159670 discloses that a catechin derivative is properly ingested in an amount of 5 to 100 mg/kg per day when used as an antiallergic and/or antiphlogistic, it is not clear to what the denominator, kg, of 5 to 100 mg/kg refers. JP 2000-0159670 discloses an antiallergic composition containing a specific catechin as an effective ingredient but does not disclose a composition containing an amount of catechin that is effective in simultaneously suppressing allergic symptoms and hyperlinemia.

For these reasons, the rejection of claims 6 and 7 should now be withdrawn.

#### **The Second 35 U.S.C. § 102 Rejection**

Claims 1-2, 4-5 and 7 stand rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by Iwasaki et al. (7,014,876). This rejection is respectfully traversed.

According to the M.P.E.P., a claim is anticipated under 35 U.S.C. § 102(a), (b) and (e) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.<sup>2</sup>

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<sup>2</sup> Manual of Patent Examining Procedure (MPEP) § 2131. See also *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Claim 1 has hereby been amended to include the limitations of original dependent claim 3, accordingly, the present rejection of claim 1 based on USP 7,014,876, and those of claims 2, 4 and 5 citing claim 1 should now be withdrawn.

USP 7,014,876 discloses a packaged beverage comprising non-polymer catechins in an amount from 0.092 to 0.5 mg/100 ml beverage and an alcoholic precipitate in an amount of 0.015 g/100 ml beverage or less in terms of the amount of magnesium (claim 1). USP 7,014,876 discloses that this beverage features a high transfer amount of catechins to the blood upon drinking so as to be capable of obtaining sufficient physiological activity (column 2, lines 17-20; column 2, lines 16-20) but does not state what symptom(s) the non-polymer catechins are specifically effective in preventing.

USP 7,014,876 exemplifies several catechins as non-polymer catechins, but states that the catechin of the present invention and additional catechins not included in the present invention are equal in terms of their activity towards maintaining healthy hepatic function, and furthermore differs in the amount thereof contained in the beverage from that presently claimed. In addition, among the exemplified catechins, USP 7,014,876 does not disclose that the beverage comprising the catechin as presently claimed in an amount of 1 mg to 30 per 100 ml (claims 1-2, 4-5) is effective in suppressing both allergic symptoms and hyperlipemia.

For these reasons, this rejection should now be withdrawn.

### **The 35 U.S.C. § 103 Rejection**

Claims 1-7 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over JP 2000-060427A abstract in view of Iwasaki et al. (USP 7,014,876) and JP 2001-253879 abstract, among which claims 1 and 6 are independent claims. This rejection is respectfully traversed.

Specifically, the Office Action contends that JP2000-060427A discloses a black tea health drink containing a catechin for improving the function of the liver but does not explicitly disclose the tea to be that of the instant claims or that the catechin is an O-methylated catechin. Additionally the office action contends that USP 7,014,876 discloses a healthy drink containing a catechin extracted from tea, such as Oolong tea. The office action further contends that JP 2001-253879 discloses O-methylated catechins from tea where R1-R7 is 1-10C alkyl residue.

Traversing, JP 2000-60427 discloses that black tea comprising epicatechin gallate, epigallocatechin, epigallocatechin gallate and epicatechin at a total content of at least twice that of ordinary black tea is effective in maintaining hepatic function health (see claim 1, column [0005]).

However, JP 2000-60427 states that the catechin (such as that presently claimed) and additional catechins not presently claimed are equal in terms of their activity towards maintaining healthy hepatic function, and that regardless of the types of catechins, these catechins are effective in maintaining hepatic function health when contained in an amount at least twice that contained in ordinary black tea.

In addition, JP 2000-60427 does not disclose that a beverage containing catechins as presently claimed in an amount of 1 mg to 30 mg per 100 ml (claims 1-2, 4-5) are effective in suppressing arteriosclerosis and obesity caused by neutral fat deposition as well as allergic symptoms, with the exclusion of hepatic disorders.

JP 2001-253879 discloses that catechins as presently claimed have antioxidant, antiallergic and apoptosis actions and thus are an important substance in the food and drug industries (see paragraph [0003]), however it does not disclose that a beverage containing catechins as presently claimed in a specific amount of 1 mg to 30 mg per 100 ml (claims 1-2, 4-5) is effective in suppressing both allergic symptoms and hyperlipemia.

JP 2000-159670, JP 2000-60427 and JP 2001-253879 disclose that catechins as presently claimed have antiallergic action and JP 2000-60427 states that catechins as presently claimed are effective in maintaining healthy hepatic function.

However, JP 2000-159670 and JP 2001-253879 describe that catechins as presently claimed and additional catechins are equal in terms of their activity towards maintaining healthy hepatic function, and neither discloses nor suggests that a beverage containing the presently claimed catechins in an amount of 1 mg to 30 mg per 100 ml (claims 1-2, 4-5) is capable of simultaneously suppressing entirely different diseases, namely, allergic symptoms and hyperlipemia such as arteriosclerosis and obesity, with the exclusion of hepatic disorders.

Therefore, it is respectfully submitted that claims 1-5 are not obvious in view of JP 2000-159670, JP 2000-60427 and JP 2001-253879.

Furthermore, JP 2000-159670, JP 2000-60427 and JP 2001-253879 neither disclose nor suggest that in a composition comprising the catechin as presently claimed, the catechin of the present invention has an amount range that enables the simultaneous suppression of entirely different diseases, namely, allergic symptoms and hyperlipemia represented by arteriosclerosis, obesity and so on, with the exclusion of hepatic disorders.

Therefore, claims 6 and 7 are not obvious in view JP 2000-159670, JP 2000-60427 and JP 2001-253879.

In view of the foregoing, it is respectfully asserted that the claims are now in condition for allowance and all rejections should be withdrawn.

### **Conclusion**

It is believed that this Amendment places the above-identified patent application into condition for allowance. Early favorable consideration of this Amendment is earnestly solicited.

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. Please charge any additional required fee or credit any overpayment not otherwise paid or credited to our deposit account No. 50-1698.

Respectfully submitted,  
THELEN REID BROWN RAYSMAN & STEINER LLP



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